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In re Application of : DECISION ON
EVRARD et al :
Application No.: 10/554,201 :
PCT No.: PCT/FR2004/000953 : PETITION UNDER
Int. Filing Date: 16 April 2004 :
Priority Date: 25 April 2003 : 37 CFR 1.181
Attorney's Docket No.: 2005-1653A :
For: A DEVICE... DRILLING FLUID :
:

This Decision is in response to applicants' "PETITION TO WITHDRAW HOLDING OF ABANDONMENT," which is being treated as petition under 37 CFR 1.181 filed on 28 December 2007 that the above-identified application was improperly held abandoned because the declaration was timely filed.

BACKGROUND

On 19 April 2004, this international application was filed, claiming an earliest priority date of 25 April 2003.

On 24 October 2005, applicants filed a Transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371 (c)(1); however, no executed declaration or oath as required by 35 U.S.C. 371(c)(4) was submitted on such date.

On 02 August 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration complying with 37 CFR 1.497(a) and (b), identifying the application by international application number and international filing date... that it is not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68. It also indicated that all the items set forth above must be submitted within two months from the date of this notice or by 32 months from the priority date for the application, whichever is later, failure to properly respond will result in abandonment.

On 07 December 2007, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) which indicated that applicant had failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905), mailed 08/02/2006 within the time period set therein; accordingly the application was abandoned.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 07 December 2007, petitioner has submitted the instant petition requesting withdrawal of the Notice of Abandonment. In support of the petition, petitioner has provided a copy of the returned/stamped receipt card acknowledging a receipt date of 21 August 2006.

DISCUSSION

The present petition was accompanied by a copy of the original postcard which was sent to the United States Designated/Elected Office (DO/EO/US). The postcard lists the item submitted on 21 August 2006 and it indicates, *inter alia*, that an executed declaration was received on such date by the USPTO. Petitioner states that the papers accompanying the present petition are copies of the response to the Notification of Missing Requirements.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed **serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.**

Applicants' postcard receipt serves as *prima facie* evidence of receipt of the listed item on 21 August 2006 by the USPTO, i.e., the execution declaration was received on such date.

Accordingly, petitioner's response- the declaration filed on 21 August 2006- is considered timely. Accordingly, the instant application has been improperly abandoned.

DECISION

Applicants' request to withdraw the "NOTIFICATION OF ABANDONMENT" is **GRANTED**. The NOTIFICATION OF ABANDONMENT, mailed 07 December 2007 has been **VACATED**.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision, that is, for issuance of a Notification of Acceptance of Application (Form PCT/DO/EO/903) identifying a 35 U.S.C. § 371(C)(1), (C)(2) and (C)(4) date of 21 August 2006.



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